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DIPLOMATIC RELATIONS BETWEEN THE UNITED STATES AND GREAT BRITAIN BEARING ON THE RETURN OF NEGRO SLAVES, 1783-1828¹

Diplomatic relations bearing on the Negro of the Revolutionary period constitute one of the mooted questions of American foreign policy. Yet although this question was then one of the disturbing factors in our relations with Great Britain, it has hitherto passed unnoticed.² As a

¹ This dissertation is the result of the researches of Mr. A. G. Lindsay under Dr. C. G. Woodson at Howard University during the academic year 1919-1920 and was submitted to the Committee on Graduate Studies in candidacy for the degree of Master of Arts. Dr. C. G. Woodson was the chairman of this committee.

The following sources were used in the preparation of this manuscript: *American State Papers, Foreign Relations*; *American State Papers, Confidential Documents*; *American State Papers*, Wait's Edition; *Annals of Congress*; *Diary of John Quincy Adams*, in his *Memoirs*; *Diplomatic Correspondence*; Force, *American Archives*; *Journals of Congress*; *Journals of Continental Congress*; McDonald's *Source Book of American History*; *Niles Register*; *Treaties and Conventions*, Edition 1889; *United States Statutes at Large*.

The following works were also consulted: John Adams, *Works*; Van Tyne, *The American Revolution*; *American Historical Association Reports*; Babcock, *Rise of American Nationality*; Benton, *Naval History of England*; Channing, *History of the United States*; Ford, *Washington's Writings*; Ford, *Jefferson's Writings*; Fiske, *Critical Period*; Gibb, *Administrations of Washington and Adams*; *The Journal of Negro History*; Morse, *John Adams*; *Naval Chronicle of England*; Ramsay, *History of South Carolina*, Edition, 1809; Sparks, *Washington*; Moore, *International Arbitration*; Moore, *Digest of International Law*; Wharton, *Digest of International Law*, Edition, 1887; Halleck, *Elements of Law*; Wheaton, *Elements of Law*, Edition, by Dana.

² Ramsay, *History of South Carolina*, Edition, 1809, Vol. I, pp. 474-475.

large number of Negroes were taken from the United States by Great Britain during the Revolutionary War there followed so much effort to secure the return of these Negroes that the subject had to be dealt with in the Treaty of Paris which ended the war in 1783. So numerous were the infractions of the stipulation prohibiting the carrying off of the Negroes and so fruitless were the discussions resulting from the non-fulfillment of the articles in the treaty that several diplomatic representatives were sent on missions to Great Britain, the last of which ended with the Jay Treaty of 1794. Obviously, no satisfactory settlement as to the Negro could then be reached. An array of evidence from the sources³ shows that the question was frequently discussed and that its significance lies in its absence from the stipulations of the Jay Treaty. It is evident, moreover, that the United States was not satisfied with this treaty and that between Great Britain and this country there was widening a breach which culminated in the War of 1812, during which Great Britain committed the same offence that she did during the war for independence.⁴

How can one account then for the unfavorable attitude of Great Britain toward the return of the Negro fugitives? The humanitarian spirit of Great Britain which, by the celebrated decision of Lord Mansfield in the Somerset case in 1772 guaranteed to every man his freedom as soon as he set foot on British soil, extended beyond the limits of the empire. Although this decision of the judge evoked some unfavorable comment, for slavery was the "normal condition of the Negro," his ideas were disseminated by the military authorities defending the Crown in America. During the Revolutionary War many of the British commanders issued proclamations of freedom to the Negro slaves. Lord Dunmore, the dethroned Governor of Virginia, was among the first to issue a proclamation of freedom⁵ to all Negroes

³ *American Historical Association*, Vol. I, p. 273. F. A. Ogg, *American State Papers*, Vol. IV, p. 304.

⁴ Moore, *International Arbitrations*, p. 350.

⁵ Van Tyne, *American Revolution*, p. 61; Force, *American Archives*, 4th Series, III, 1385.

who would fight for the King. Soon thereafter, Clinton,⁶ the Commander-in-chief of the British forces in America, issued a proclamation to the same effect. Still later, Cornwallis issued a proclamation specifying the grant of "freedom and protection" to all Negroes who would seek his command. Whatever motive prompted the issuance of these orders, it is evident that the status of the Negro during this "emergency" as regarded by Great Britain was that of a freeman.

To these proclamations many Negroes responded. For instance, General Greene learned on Long Island that a group of Negroes aggregating two hundred (200) had in July, 1776, sought freedom within the British lines and had been accepted as a regiment in that vicinity.⁷ He reported, moreover, to General Washington in 1781 that enough Negroes in North Carolina to form two regiments had sought British freedom and protection and that they were being organized by the British.⁸ Whether they came within the British lines as a result of these proclamations or in recognition of the laws of war "it has been computed by good judges" says Ramsay,⁹ "that at the evacuation of one part, two hundred and forty-one Negroes and their families were taken off to St. Lucia in one transport, the *Scimitar*; and that between the years 1775 and 1783, 25,000 Negroes, that is, one-fifth of all the slaves, were taken from the State of

⁶ Proclamation—"Whereas the enemy have adopted a practice of enrolling Negroes among their troops, I do hereby give Notice that all Negroes taken in Arms or upon any military Duty shall be purchased for the public service at a stated price; the money to be paid to the captors. But I do most strictly forbid any Person to sell or claim right over any Negroes the property of a Rebel who may take refuge with any part of this Army. And I do promise to every Negro who shall desert the Rebel Standard full Security to follow within the Lines any occupation which he may think proper." Given under my Hand at Headquarters, Phillipsburg, the 30th day of June, 1799.

H. CLINTON.

By his Excellency's Commander

JOHN SMITH, Sec.

Journal of Continental Congress, II, 26; Van Tyne, *American Revolution*.

⁷ Force, *American Archives*, I, 486, Fifth Series.

⁸ *Journal of Continental Congress*, II, 26.

⁹ Ramsay, *History of South Carolina*, Edition, 1809, I, 474.

South Carolina.” In Georgia,¹⁰ there was made a report that the loss was much greater, probably three-fourths or seven-eighths of all the Negroes in the State. Again, from an estimate made at the time, Jefferson observed that about thirty thousand Negroes were taken from Virginia.¹¹ From the other slave-holding States which were invaded by the British, many other Negroes were carried away from their masters. So effectively was the scheme carried out that fear was expressed throughout the South less the economic position of that section would be threatened. In consequence of such actions on the part of Great Britain, General Washington receded from the position of excluding Negroes from the American Army and took drastic steps in preventing the carrying away of other Negroes by Great Britain.¹²

Considered, therefore, as an American slave in time of peace and an American soldier in time of danger, it is no anomaly that the status of the Negro complicated the negotiations between military representatives of Great Britain and the United States. Extended but fruitless negotiations ensued. A satisfactory settlement of the return of the Negroes seemed impossible. With independence assured through the representatives assembled, the Treaty of Paris was negotiated in 1783. Franklin urged in his communication with Oswald, 1779, that the question as to the return of Negroes taken away by Great Britain be adjusted immediately.¹³ This suggestion was strengthened by the support given it by the American representative, Henry Laurens, who had been in confinement in London during the war and whose chance arrival on the closing day gave the subject increased importance. Thus credit for the incorporation of the article on the Negro into the Treaty of Paris is given to Henry Laurens.¹⁴

¹⁰ Moore's *Historical Notes*, 14; *Journal of Negro History*, Vol. I, p. 117.

¹¹ *Jefferson's Works*, Vol. II, p. 426.

¹² Sparks, *Washington's Works*, III, 218.

¹³ Channing's *History of the United States*, Vol. III, pp. 348-369.

¹⁴ *American Historical Association Report*, Vol. I, p. 273.

By the Seventh Article of the Treaty of Paris,¹⁵ it was stipulated that the British troops should withdraw from the United States without carrying away or destroying any property belonging to the citizens of the United States. In spite of this agreement at the peace conference, this stipulation was not fulfilled by Great Britain. Convincing evidence of an infraction of this stipulation is seen in a letter written by General Washington to Sir Guy Carleton, May 6, 1783, in which the former expressed himself as being surprised to hear that embarkations of Negroes had taken place during the whole of that year.¹⁶ He, moreover, expressed his private opinion to the effect that such an action "is totally different from the letter and spirit of the treaty." A few days thereafter the Virginia delegates in Congress wrote to the Governor of Virginia that they would make this the subject of a "pointed remonstrance from our minister in Europe to the British Court with a demand for reparation and in the meantime urge General Washington to insist on a more faithful observance of that stipulation at New York."¹⁷

Notwithstanding further orders which were issued by Sir Guy Carleton, May 12, 1783, to prevent the carrying away of any Negroes or other property of the American inhabitants many other infractions of the provision were

¹⁵ Article 7, Treaty of Paris.—"There shall be a firm and perpetual peace between his Brittanic Majesty and the said States, and between the subjects of the one and the citizens of the other, wherefore all hostilities both by sea and land shall from henceforth cease: All prisoners on both sides shall be set at liberty, and his Brittanic Majesty shall with all convenient speed, and without causing any destruction or carrying away any Negroes or other property of the American inhabitants, withdraw all his armies, garrisons and fleets from the said United States, and from every port, place and harbour within the same; leaving in all fortifications the American artillery that may be therein; and shall also order and cause all archives, records, deeds and papers belonging to any of the said states or their citizens which in the course of the war may have fallen into the hands of his officers to be forthwith restored and delivered to the proper states and persons to whom they belong."

McDonald, *Documentary Source Book of American History*, p. 208.

¹⁶ *American Historical Association Report*, 1874, p. 421. Waits, *American State Papers*, Vol. I, p. 279.

¹⁷ *Journal of Negro History*, Vol. II, pp. 411-422.

reported.¹⁸ Even General Washington remarked¹⁹ that "some of his own slaves and those of friends living with him were probably carried away to New York." "If by chance," continued he, "you should come at the knowledge of any of them, I will be much obliged by your securing them so that I can obtain them again." So numerous were the violations of this part of the treaty that Thomas Jefferson, Secretary of State, in a letter written to Vergennes, the Foreign Minister of France, asked for suggestions from France in regard to the infractions of this article of the Treaty of Paris. In it, he expressed the objection of the Crown, which was to the effect that Negroes had come within the British lines under the promise of freedom and protection and that this promise was fulfilled by Great Britain in preference to the stipulation in the treaty.²⁰

The situation became more aggravated. The breach between the two countries was gradually widening. Sensing this acute situation, Washington suggested that Carleton meet him in a conference at Orangetown, New Jersey, May, 1783. At one of their meetings Washington called the attention of Carleton to several resolutions passed by Congress relating to the return of all Negroes and other property of American inhabitants taken away by the British forces. Concerning these, Carleton replied that he wished to be considered as giving no construction of the treaty, but that he "conceived it could not have been the intention of the British Government by the treaty of peace to reduce themselves to the necessity of violating their faith to the Negroes who came within the British lines under the proclamation of the predecessors in command."²¹ In point of fact, however, he said "delivering up the Negroes to their former masters would be delivering them up—some to execution and others to punishments which would in his own

¹⁸ Sparks, *Washington*, Vol. VIII, Appendix, p. 544.

¹⁹ Washington to Daniel Parker in Ford's *Washington's Writing*, X, 246-247.

²⁰ Ford's Edition of *Jefferson's Writings*, p. 127.

²¹ *Journal of Negro History*, Vol. II, p. 417.

opinion be a dishonorable violation of the public faith." He concluded, nevertheless, that if the sending off of the Negroes should hereafter be declared an infraction of the treaty, "compensation ought to be made by Great Britain to the owners."²²

In regard to the last suggestion of Carleton, Washington observed that many difficulties would arise in compensating the proprietors for their Negroes. He also thought it impossible to ascertain the value of the Negroes, for the value of a slave, contended he, "consists chiefly in his industry and sobriety." Another difficulty Washington observed was that of identifying the slave. He was of the opinion that the slave would give the wrong name of his master. Washington considered this conduct on the part of General Carleton, moreover, a departure from both the letter and spirit of the Seventh Article of the Treaty of Paris.

In answer to these contentions Carleton said that as the Negroes were free and secured against their masters they could have no inducement to conceal their true name or that of their masters. In commending compensation Carleton was of the opinion that he was pursuing a course which would operate most for the security of the proprietors. "If the Negroes were left to themselves," he remarked, "numbers of them would very probably go off and not return to the parts of the country from whence they came or clandestinely would get on board the transports in such a manner as would not be in his power to prevent." "In either case," continued Carleton, "an inevitable loss would ensue to the proprietors."²³ But as the business was then conducted they had at least a chance for compensation.

In conformity with these views, Carleton suggested that commissioners be appointed by the two countries "to agree upon the mode of compensating as well as the amount and other points with respect to which there was no provision made in the treaty." This suggestion was approved by Congress, and in compliance with it Egbert Benson, William

²² Ford, *Washington's Writings*, X, 241-243.

²³ *Journal of Negro History*, II, 418.

Smith, and Daniel Parker were appointed²⁴ with specific instructions from Washington to "assist representatives of Great Britain in inspecting and superintending the embarkation of persons and property in fulfillment of the Seventh Article of the Treaty of Paris."²⁵

These commissioners began their work immediately by examining the claim of one Phillip Lott to a Negro named Thomas Francis²⁶ on board a vessel called the *Fair American* in New York harbor and about to be carried to the island of Jamaica. Concerning this inquiry a pointed remonstrance was made to Sir Guy Carleton. After the details of the examination were presented to him, the commissioners requested Great Britain to prohibit its representatives from carrying away the Negro and to deliver Francis to Lott. Notifying Washington, June 14, 1783, of their progress, the commissioners reminded him that Sir Guy Carleton intimated an impropriety in the claim, as the property was not suggested to be in danger of being sent away. "This left room," said the commissioners, "for an idea that possibly property about to be sent away would be restored . . . and we conceive it is now reduced to a certainty that all applications for the delivery of property will be fruitless and we therefore desist from them."²⁷

A few days later the commissioners reported to Washington that in superintending an embarkation of fourteen transports bound for Nova Scotia "about 3000 souls, among whom were at least 130 Negroes who appeared to be property of the citizens of the United States," were carried away. They also indicated that these embarkations were made in spite of their presence and remonstrance and for this reason asked General Washington for "further directions on this subject."²⁸ Other reports of the commissioners to General Washington, June 17, 1783, show that on many other occasions Negroes not residing within the Brit-

²⁴ *Diplomatic Correspondence*, Vol. XI, p. 335.

²⁵ Ford, *Washington's Writings*, X, 241-243.

²⁶ *American State Papers—Foreign Relations*, I, p. 190.

²⁷ *Ibid.*, I, p. 191.

²⁸ *Ibid.*, I, pp. 188-192.

ish lines were taken away. To the remonstrances of the commissioners, Sir Guy Carleton gave a deaf ear. They, in the meantime, wrote General Washington that they had interpreted Carleton's silence as a "determination that all future applications should remain equally unnoticed." That they realized that their efforts were fruitless goes without saying, for they confessed that their work was ineffective and that the British vessels were never subjected to any rigid inspections and it was, therefore, impossible to determine, from the register provided by Sir Guy Carleton, the exact number of Negroes carried away in those vessels.²⁹

The work of the commissioners, nevertheless, was noteworthy. They called Washington's attention to the fact that Sir Guy Carleton affected to distinguish between the cases of such Negroes as came within the British lines in consequence of the promise of freedom and protection promulgated by Carleton's predecessors and such as came in either previous to the proclamations or subsequent to the cessation of hostilities. "Negroes of the first description," insisted Carleton, "were not included in the treaty." The commissioners soon realized that even this limited construction given to the article was not intended to be fulfilled by Carleton's subordinate officers. They based their contention upon the fact that printed certificates granting Negroes the privilege of embarking³⁰ were distributed by the commandant of New York City, "as their convenience might require."³¹ These certificates fell into the hands of

²⁹ *American State Papers, Foreign Relations*, Vol. I, pp. 188-192.

³⁰ *Blank certificate*—New York, April 23, 1783.

This is to certify to whomsoever it may concern that the bearer hereof a Negro restored to the British Lines in consequence of the proclamation of Sir William Howe and Sir Henry Clinton, late Commanders-in-chief in America; and that the said Negro has hereby his excellency's Sir Guy Carleton's permission to go to Nova Scotia or wherever else may think proper.

By order of

BRIGADIER GEN. BUCK.

E. WILLIAMS,
Major of Brigade.

³¹ *American State Papers*, Vol. I, pp. 190-192.

many persons for whom they were not intended. So loosely were they distributed that one was picked up by the commissioners who transmitted the same to General Washington.

On the other hand, the commissioners insisted that the treaty stipulated specifically that his Britannic Majesty should withdraw all his armies, garrisons and fleets from the United States and from every port, place and harbor within the same without causing any destruction or carrying away any Negroes or other property of the American inhabitants.³² With these two interpretations of the Seventh Article invariably insisted upon by Carleton on the one hand and the commissioners on the other an agreement was less likely to be reached and, in spite of the efforts to the contrary, the deportation of Negroes took place steadily until all the British departed.³³

In the meantime, Congress was discussing the ratification of the Treaty of Paris. The non-observance of the Seventh Article on the part of Great Britain and the destruction worked by Carleton evoked many resolutions opposing the ratification of the treaty for the expressed reason that it did not provide for the loss of Negroes. One of these resolutions was to the effect that it was "inexpedient to concur in passing laws necessary for carrying into effect the treaty."³⁴ These efforts of Congress, however, like those of the commissioners were of no avail. Complaints of American citizens of the loss of their property were expressed by the representatives in Congress. They, to be sure, had their effect, for soon thereafter, Congress transferred the question of the return of Negroes to the realm of actual diplomacy.³⁵

John Adams, 1788, who, by the way, was one of the representatives of the United States who signed the Treaty of

³² McDonald's *Source Book of American History*, p. 208.

³³ *American Historical Association Report*, Vol. I, p. 276.

³⁴ *Annals of Congress*, 4th Congress, p. 970.

³⁵ *Report of the American Historical Association*, pp. 413-444; *Diplomatic Correspondence 1783-1789* (3 Vol. ed.), II, 340.

Paris, received an appointment as representative of this country to England to settle the alleged violations of the Treaty of Paris. He was instructed in 1785 to press for a fulfillment of the terms of the treaty of peace on the part of Great Britain.³⁶ He had little time, however, to press his claim before representatives of Great Britain were inquiring why the United States did not perform her part in this reciprocal contract. To these inquiries, Adams replied that "America could not; that it was hardly a government at all." He, moreover, informed Congress that the reason assigned by Laurens for incorporating the Seventh Article was that the people of the United States would be unable to comply with the part of the treaty which respects debts unless the provision which respects Negroes was made. "This construction," he continued, "was never denied and that it seemed to be understood by the ministry that on a settlement with the United States compensation must be made."

Obviously, then, both Great Britain and America understood that the Seventh Article would be fulfilled by Great Britain only when the Fourth, Fifth and Sixth Articles were fulfilled by the United States.³⁷ This point, however, was discussed pro and con for many months and was seldom admitted by the American diplomatic representatives. Adams himself said that he could "get no comfort from his mission." The construction given the Seventh Article making its fulfillment by Great Britain contingent upon the execution of other provisions only complicated matters.

Another mission was planned in 1789,³⁸ but before another representative was appointed Washington urged upon Gouverneur Morris, who contemplated visiting London, "to find out the reasons why Great Britain had not complied with the Seventh Article." In a letter written to Morris, October 13, 1789, Washington desired Morris to con-

³⁶ Morse, *John Adams*, p. 235.

³⁷ *Adams' Works*, Vol. VIII, p. 303.

³⁸ *American Historical Association Report*, 1894, p. 422. McLaughlin. *American State Papers, Foreign Relations*, Vol. I, p. 122.

verse with his Brittanic Majesty's Ministers as to whether there was any objection to performing those articles remaining to be performed on his part. "Learn with precision," he concluded, "what they mean to do on this head." In compliance with this request, on April 7, 1790, Morris interviewed the British representative, the Duke of Leeds, who gave to him only "general assurances" for a faithful observance of the articles and, becoming a "little embarrassed," could not say how the matter in regard to the Negroes stood. After many days of silence, the Duke of Leeds, April 23, 1790, "lamented every circumstance" which delayed the fulfillment of engagements on the part of the United States.³⁹ He also indicated that, if circumstances rendered their final completion impracticable, he had no scruples in declaring the object of Great Britain would be to "retard the fulfillment of such subsequent parts of the treaty as depend entirely upon Great Britain until redress is granted to their subjects upon the specific points of the treaty itself or a fair and just compensation for the non-performance of those engagements on the part of the United States."⁴⁰

Informing Washington of his progress, May 29, 1790, Morris disclosed the fact that he was no longer contending for the return of the Negroes, for that would involve either "breaking faith" with those whom they had seduced by the offer of freedom or the violation of the stipulation which they had made with the United States in the Treaty of Paris. In presenting America's side, however, he insisted upon compensation in order that it would not be difficult for the planters to show that they had sustained a heavy loss from the want of men to cultivate their lands and thereby produce the means of paying their debts. To this the Duke of Leeds replied that he wished to "consider the treaty subject generally" and thought that some compensation could be mutually made. He declared, nevertheless, that he

³⁹ *American Historical Association Report*, 1894, p. 422.

⁴⁰ *American State Papers, Confidential Documents*, Vol. X, p. 80.

would rather "make a new treaty than perform the Seventh Article of the Treaty of Paris."⁴¹

Subsequent diplomatic negotiations between Jefferson and Hammond, the Minister of Great Britain, indicate that Washington was not satisfied with the status of the case after Jefferson cited specific infractions of the Seventh Article of the treaty, enclosing documents supporting these claims. Hammond informed the United States, November 30, 1791, that the King had suspended the execution of the Seventh Article in consequence of the non-compliance on the part of the United States of the Fourth, Fifth and Sixth Articles. In short, he insisted that the stipulations should be performed in the order in which they stood. He stated, moreover, that the "two objects were so mutually connected with each other as not to admit of separation either in the mode of discussing them or in any subsequent engagements which might result from that discussion."⁴²

It was soon evident then that such extended discussions were fruitless. This state of affairs, to be sure, could not exist very much longer. Citizens of the United States were pressing "more zealously" for the return of the Negroes. For almost a decade the subject had been discussed without an amicable adjustment. In a communication to the Congress, April 16, 1794, Washington showed that he had grasped the situation by informing that body of the fact that "despatches received from our minister in London contain a serious aspect of our affairs with Great Britain." He suggested, therefore, to the Senate that an envoy extraordinary be sent to England. To this end Washington appointed John Jay to settle the infractions of the Treaty of Paris.⁴³

In Jay's instructions nothing was specifically said concerning the carrying away of the Negroes by the British, but, as it appeared from subsequent transactions, it is quite

⁴¹ *American State Papers, Confidential Documents*, Vol. X, p. 85.

⁴² McLaughlin, *Western Posts and British Debts*, p. 423 in *American Historical Association Report*, 1894.

⁴³ *American State Papers, Foreign Relations*, Vol. I, pp. 470-472.

certain that the infractions of the Seventh Article as well as those of other articles were to be adjusted. In this wise, the "irrepressible question"—relating to the return of Negroes carried away by Great Britain during the Revolutionary War became one of the purposes of Jay's mission.⁴⁴

During the negotiation with Grenville there took place many heated debates, in which each party accused the other of the first aggression. Meanwhile Jay ascertained, September 13, 1794, that Grenville supported the contention held by his predecessors, that the article of the treaty was intended to prevent depredations at the departure of the army; that no alteration in the actual state of property was intended by the Seventh Article; that every Negro who strayed or escaped from the American lines and came into the lines of the British Army became by the laws of war British property; and that to extend the Seventh Article of the treaty to include Negroes who came within the British lines under the proclamation of freedom was to give it a "wider latitude than the terms of it would warrant."⁴⁵ In short, Grenville contended that in regard to those within the British lines before the signing of the treaty they were "left entirely without restrictions."⁴⁶

In reply to Grenville's argument Jay divided the subject of the Negroes into three groups: first, the Negroes captured or disposed of during the course of the war; second, the Negroes who remained with and belonged to American citizens within the British lines; and third, the Negroes who, confiding in the promise of freedom, fled from their masters and took refuge with the British. Concerning the first two groups, no extended discussion followed. Grenville stated, however, in regard to the second group, that he was "not so sure." The last-named group on the other hand, produced much pourparler, for Jay maintained that these Negroes were "clearly comprehended by the terms of the treaty." According to his argument, Negroes could not

⁴⁴ Jay to Randolph, *American State Papers*, Vol. I, p. 485.

⁴⁵ *American State Papers*, Vol. I, p. 485.

⁴⁶ *Ibid.*, p. 486.

by "mere flight" alter their slave character. He soon appreciated the difficult position of England in trying to keep the pledges of freedom offered to the Negroes and at the same time fulfill, according to the American interpretation, the article of the treaty in regard to the return of Negroes.

During the negotiation Jay admitted, moreover, that the carrying away of Negroes was justifiable in view of the promises of freedom and protection promulgated by British military representatives.⁴⁷ He concluded, however, with the thought that "Great Britain ought not to expect to escape the consequence of the folly of her Generals in America." For this reason he restated the idea expressed by other American representatives to Great Britain, that compensation should be obtained for the Negroes carried away. In spite of Jay's change of position Grenville persisted with unyielding opposition in the view that such slaves were no longer American property. "On this point" wrote Jay to Randolph, "we could not agree."

Concerning this question, Jay said, moreover,⁴⁸ that "various articles have been under consideration but did not meet with mutual approbation and consent." Sensing the situation Randolph declared to Jay, December 3, that he was extremely afraid that the reasoning of Grenville about the Negroes would not be satisfactory. "Indeed I own," said Randolph, "that I can not myself yield to its force." Randolph knew of the anti-British sentiment in the South and realized that the treaty would be opposed by the South because that section would feel that it had been neglected,⁴⁹ should it receive no compensation for the Negroes carried away by the British.

In a communication to Jay two weeks later it is obvious that there was no concerted opinion even in America in regard to the much mooted question. Jay and Randolph, for instance, differed as to whether the slaves concerned ever became the property of Great Britain. Jay held that the

⁴⁷ *American Historical Association Report*, Vol. I, pp. 273-298.

⁴⁸ *American State Papers*, Vol. I, p. 501.

⁴⁹ *Ibid.*, p. 509.

Negroes in question never became the property of Great Britain whereas, Randolph held that while property is acquired in movables as soon as they come within the power of the enemy, yet "property rights thus acquired in war may by the treaty of peace be removed."⁵⁰

To the contention of Great Britain that the Seventh Article meant merely an engagement against further depredations, Randolph declared the stipulation "superfluous"; for he maintained that the mere cessation of war meant that much. To this point, Grenville declared the treaty "odious," if the stipulation were interpreted to include Negroes who sought British lines under the promise of freedom and protection "on the basis of common morality." Great Britain was not to be expected to execute a stipulation with such an interpretation. Obviously, then, Great Britain would not recede from her position. Citizens of America, especially those deprived of their property, were beginning to think that our diplomatic relations were not properly taken care of by Jay. Expressions of disapproval of the treaty by resolutions in the Senate evinced the temper of the people. Jay, in the meantime was called "traitor"; his mission was declared a failure and the treaty was attacked from many sides.

At this juncture special mention must be made of the objections of the southerners on the ground that the treaty did not provide for the return of their property, while the objection of the North was not so pressing. In fact, northerners acquiesced in the opinion of Hamilton who had substantially the same view that Grenville had.⁵¹ Thus we see the first glimpse of the North becoming estranged from the South because of the difference of opinion in regard to the Negro.

The leading source of dissatisfaction of the treaty of Jay seemed to be a failure to get compensation for the Negroes carried away by Great Britain. The stipulation,

⁵⁰ *American Historical Association Report*, Vol. I, pp. 273-298.

⁵¹ *Annals of Congress*—4th Session, 1795-96, p. 1006.

moreover, was not definite, for many constructions could be placed upon it. The words of the treaty, moreover, were too vague and uncertain to express accurately the intention of the signers. Whether Negroes whom the British carried away could any longer be considered American property, seemed to be the crux of the situation. Although no definite settlement could be reached by the two nations, authorities of international law⁵² give the case to Great Britain. One rule which was recognized by the foremost nations of the world was to the effect that a slave escaping in war becomes free. Concerning this Halleck says that such slaves cannot be regained by their former masters.⁵³ Woolsey says that "a slave sojourning to a free land cannot be treated as his master's property—as destitute of jural capacity." To the same purport, Heffter says "in no case is a state bound to allow the slavery which subsists in others." Dana, in his edition of Wheaton's *International Law* supports this contention.⁵⁴

Dissatisfied with results but not discouraged, however, Washington appointed commissioners, December 7th, 1798, to work with commissioners from Great Britain and proceed with the infractions of the treaty. A short time thereafter President Adams in an address to Congress, November 23, 1797, reported that several decisions on the claims of citizens of the United States for losses and damages sustained by reason of irregular and illegal captures or condemnations of their vessels or other property had been made by the commissioners in London, conformably to the Seventh Article of the Treaty. "The sums awarded by the Commissioners," said he, "have been paid by the British Government; a considerable number of other claims where costs and damages and not captured property were the only objects in question have been decided by arbitration, and the sums awarded to the citizens of the United States have also been paid."⁵⁵ These decisions served to

⁵² Halleck, *Elements of Law*, p. 358.

⁵³ *Ibid.*, p. 359.

⁵⁴ Wheaton's *Edition by Dana*, page 441.

⁵⁵ *American State Papers—Foreign Relations*, Vol. II, p. 46.

allay the discontent in America. Still later, Adams informed Congress that "such progress had been made in the examination and decision of cases . . . which were the subject of the Seventh Article that it is supposed the Commissioners will be able to bring their business to a conclusion in August of the ensuing year."⁵⁶

No account of the final settlement of these claims, however, is found in the sources. Dissatisfaction became more intense. Claimants were pressing on all sides for a fair compensation for the loss of their property. So serious was the situation that the House of Representatives went beyond its accustomed limitation and discussed in 1798 the treaty-making power of the United States. Pressure had been brought to bear upon the representatives of the people because the Jay Treaty had been ratified by the President and Senate and it did not contain a provision covering the return of the Negroes.

Further efforts, nevertheless, were made to adjust the differences between the two countries. They, however, were of little avail. The Republican policy of Jefferson which this country strictly followed from 1801 to 1809 had as its basic principle that governments ought to do as little as possible. Hence our army and navy were cut down to the extent that the American Government could not assert itself against foreign encroachment. Particularly in 1804 our relations with Great Britain became worse when the Jay Treaty of 1794 by agreement was allowed to expire. To compel Great Britain to come to terms Congress enacted a non-important act which never had the desired effect.

Soon thereafter the continental system and the paper blockade engaged the attention of the American Government. Negotiations had failed. Great Britain would not make a treaty. The accumulation of injuries called for action of some kind. To yield and say nothing meant to give up the rights of an independent nation. For this reason Jefferson introduced in 1807 the Embargo with which

⁵⁶ *American State Papers—Foreign Relations*, Vol. II, p. 48.

he hoped to force France as well as Great Britain to come to terms—to recognize the United States as a “free sovereign and independent nation.” Meanwhile a spirit of nationality was developing in the country. Soon thereafter war was declared and waged against Great Britain to win the respect and honor which every nation deserves.

In this state of war the provisions of the Treaty of Paris and the Jay Treaty were nullified. In response to an inquiry as to whether these treaties, so far as they were not fully executed, terminated by the War of 1812, the British Department of State in a communication replied that “with respect to the treaties you are informed that they were claimed by Great Britain at the conclusion of the Treaty of Ghent to have terminated by the War of 1812.”

Against this view the United States protested. In the decision of the Supreme Court of the United States in the case of the *Society for the Propagation of the Gospel v. the Town of New Haven*, the view was expressed that provisions of a treaty remain in full force in spite of war.⁵⁷ The general rule of international law, however, is that war terminates all subsisting treaties between the belligerent powers.⁵⁸ The United States, moreover, soon acquiesced in this view, for President Polk in his message to Congress, December 7, 1847, said, “a state of war abrogates treaties previously existing between the belligerents.”⁵⁹ Great Britain then was legally excused by the best authorities of the world from executing fully the provisions of the Treaty of 1783 and the Jay Treaty of 1794.

As a result, the same policy in regard to the carrying away of Negroes was followed during the War of 1812.⁶⁰ While the British forces were occupying the forts and harbors of the United States, Negroes came within their possession. Many were induced to run away while others were captured in battles. From the Dauphin Islands-pos-

⁵⁷ Moore, *Digest of International Law*, Vol. V, page 372.

⁵⁸ *Ibid.*, page 375.

⁵⁹ *Ibid.*, pp. 375-376.

⁶⁰ *American State Papers—Foreign Relations*, Vol. IV., p. 106.

sessions claimed to be without the limits of the newly acquired Louisiana territory the British carried away slaves. In fact, from whatever places the British occupied they carried away Negroes. Many Negroes came also into the possession of the British by the proclamation of Admiral Cockrane of Great Britain, April 2, 1814, setting such loyal adherents free. In effect, this proclamation extended an invitation to all persons desiring to change their slave status. Although the proclamation⁶¹ did not specify the Negroes, the meaning and object of Admiral Cochrane was evidently to bring Negroes within the British lines. Many, to be sure, responded to the proclamation. As many more, no doubt, were carried away from the United States by the British under the veil that they were captives in the war and, therefore, no longer the property of American inhabitants.

With victory assured and the representatives of Great Britain and America assembled in Ghent, July 11, 1814, one of the first questions for the commissioners to consider was evidently the return of the Negroes. This question had primary consideration in the final draft of the Treaty of Ghent. By the first article of the treaty it was provided that "all possessions whatsoever taken by either party during the war or which might have been taken after the signing of this treaty shall be restored without delay and that these

⁶¹ This proclamation was:

"Whereas it has been represented to me that many persons now resident in the United States have expressed a desire to withdraw therefrom, with a view of entering his Majesty's service, or of being received as Free Settlers in some of his Majesty's colonies

"This is therefore to give notice

"That all those who may be disposed to emigrate from the United States will with their families be received on board his Majesty's ships or vessels of war or at the military ports that may be established upon or near the coast of the U. S. where they will have their choice of either entering his Majesty's sea or land forces, or of being sent as Free Settlers to the British possessions in North America or the West Indies where they will meet all due encouragement.

"Given under my hand at Bermuda this 2nd day of April, 1814.

"By Command of VICE ADMIRAL WILLIAM BALHETCHET

"ALEX. COCHRANE."

Niles Register, Vol. VI, p. 242.

possessions should not be destroyed." It specified, moreover, that artillery, public and private property, originally captured in the forts of the United States should not be carried away.⁶²

Negroes were carried away by the British forces after the treaty was signed as well as before. In Georgia many Negroes came into possession of the British at Cumberland Island fortified by Admiral Cockburn.⁶³ In a letter dated November 22, 1914, Joseph Cabell gave evidence to support the above-mentioned facts when he declared that he was on board a British squadron in Lynnhaven Bay at the time Major Thomas of York attempted to recover his Negroes, who had gone off to the British and that the destination of the Negroes on board the ships was a subject of curiosity and concern. Soon, however, he learned that they were to be sold in the Bahamas.⁶⁴ From another reliable source comes the information that a shameful traffic had been car-

⁶² Article I, Treaty of Ghent:

"There shall be a firm and universal peace between His Britannic Majesty and the United States, and between their respective countries, territories, cities, towns, and people, of every degree, without exception of places or persons. All hostilities, both by sea and land, shall cease as soon as this treaty shall have been ratified by both parties as hereinafter mentioned. All territory, places, and possessions whatsoever taken by either party from the other during the war or which may be taken after the signing of this treaty excepting only the islands hereinafter mentioned, shall be restored without delay, and without causing any destruction or carrying away any of the artillery or other public property originally captured in the said forts or places and which shall remain therein upon the exchange of the ratifications of this treaty, or any slaves or other private property. And all archives, records, deeds, and papers, either of a public nature, or belonging to private persons which in the course of the war may have fallen into the hands of the officers of either party, shall be as far as may be practicable forthwith restored and delivered to the proper authorities and persons to whom they respectively belong. Such of the islands on the Bay of Passama-Quoddy as are claimed by both parties shall remain in the possession of the party in whose occupation they may be at the time of the exchange of the ratifications of this treaty, until the decision respecting the title to the said islands shall have been made in conformity with the fourth article of this treaty. No disposition made by this treaty as to such possession of the islands and territories claimed by both parties, shall in any manner whatever be construed to effect the right of either. . . ."

⁶³ *American State Papers, Foreign Relations*, Vol. III, p. 750.

⁶⁴ *Ibid.*, Vol. III, page 751.

ried on in the West Indies.⁶⁵ Secretary Monroe presented to the Senate, moreover, an affidavit of a Captain Williams who had been a prisoner in the Bahamas for some time. In this he declared that he had been present at the sale of Negroes taken from the vicinity of Norfolk and Hampton. "This affidavit," said Monroe, "was voluntarily given and the facts have been corroborated by a variety of circumstances."

Such information was given in the Senate. In discussing the ratification of the treaty the Senate suggested that commissioners be appointed to carry into effect the first article. In line with this view John Quincy Adams, Henry Clay, and Albert Gallatin were authorized to supervise the execution of this article. In a communication to Secretary Monroe, Feb. 23, 1815, the commissioners reported that "all slaves and other private property are claimed to be delivered up."⁶⁶

So much progress in so short a time was remarkable. To adjust all the claims in an amicable way would hardly occur. It was soon learned by the commissioners that "all slaves and other private property" were delivered up by the British using as their guide a different construction of Article I. "The construction," Monroe said, "ignored the distinction which existed between public and private property." Had it been intended he continued, "to put slaves and other private property on the same ground with artillery and other public property the terms "originally captured in the said forts or places which shall remain therein on the exchange of the ratification of the Treaty" would have followed at the end of the sentence after "slaves and other private property."⁶⁷ With their construction, he contended that both interests, the public and private would have been subject to the same limitation. Besides, Monroe held that the restrictive words immediately following "artillery and other public property" was not intended

⁶⁵ Moore's *International Arbitration*, page 350.

⁶⁶ *Naval Chronicle*, Vol. XXIV, page 213.

⁶⁷ Moore's *International Arbitration*, p. 352.

to include the words "slaves and other private property." If "the slaves and other private property" are placed on the same footing with artillery and other public property, "the consequences must be that all will be carried away."

Monroe learned, furthermore, that Mr. Baker, Charge D'affaires of Great Britain, had placed another construction on Article I of the treaty. In this new construction he had made a distinction between slaves who were in British ships of war in American waters and those in the ports held by British forces at the time of the exchange of ratifications.⁶⁸ Monroe and the commissioners, on the other hand, were of the opinion that the United States was entitled to all slaves in possession of the British forces within the limits of the United States forts or British ships of war. Concerning this opinion Baker wrote April 3, 1815, that it could not be shown that Monroe's construction was sanctioned by the words of the Article. "If this construction had been known then," he remarked, "we would have decidedly objected to it and proposed others."⁶⁹

Accessible reports indicate that the governments of Great Britain and the United States persisted in the constructions given by their respective representatives. Clavelle, the Commander-in-Chief of the British forces in the Chesapeake, claimed that the treaty meant only such slaves or other private property should be delivered up as were "originally captured in the forts or places to be restored." In conformity with their construction of the Article, Clavelle refused furthermore to restore the slaves taken from Tangier Islands, because they were not originally captured there. The United States, on the other hand, was of the opinion that the country was entitled to all slaves within its limits on the exchange of the ratifications of the treaty. The United States believed, finally, that the carrying away of Negroes applied to both kinds of property because the word was common to both descriptions.

By the usage of civilized nations in cases of invasion

⁶⁸ *American State Papers*, Vol. IV, p. 105.

⁶⁹ *Ibid.*, p. 108.

private property with the exception of maritime captures was respected. This meant, in effect, that none could be lawfully taken away. Influenced by this usage Great Britain receded from her position and declared that the claim of the United States to indemnification for her slaves—had never been resisted. In the meantime Great Britain declared April 10, 1816, that she could not consider any property which had been previous to ratification of the treaty removed on shipboard as “property forming a subject for a claim of restoration or indemnification.” In spirit, these two declarations were contradictory. Besides they made the subject more difficult and puzzling.

In the meanwhile the work of the commissioners continued. In their efforts to take an inventory of the slaves so that the claims might be adjusted, they encountered the opposition of Clavelle and Cockburn. It was clearly evident that the efforts of the commissioners would be of no avail. More coercive means were necessary to settle such an extended and controversial question. In a convention of commerce between Great Britain and the United States October 20, 1818, representatives realized that an agreement in regard to the Negroes was hardly possible. The representatives from the United States, therefore, offered to refer the differences to some friendly sovereign or State to be named for that purpose. They agreed further to consider the decision of such a friendly sovereign or State to be “final and conclusive.”⁷⁰

Very soon thereafter the Emperor of Russia offered to use his good offices as mediator and after a short discussion, his proposal was accepted. To this end there was concluded on June 30, 1822, a convention in which the adjustment of the claims for indemnity was left to a mixed commission. This action was followed by desultory and extended discussions which terminated, nevertheless, in the final disposition of the controversy. The point of difference was decided in favor of the United States. In handing

⁷⁰ *American State Papers*, Vol. IV, p. 126.

down his decision the Emperor held that the limitations as to the restitution of public property bore no relation to private property. In effect, he said that the treaty prohibited the carrying away of any private property whatever from the places and territories stipulated in Article I of the Treaty of Ghent. He contended that "the United States was entitled to consider as having been carried away all slaves who had been transported from those territories on board of English vessels within the waters of American territories and who for that reason had not been restored."⁷¹

In compliance with the decision of the Emperor of Russia a mixed commission, one commissioner and one arbitrator from Great Britain as well as the United States met July 30, 1822, at Washington, D. C., under the Emperor's mediation.⁷² For the United States Langdon Cheves was the commissioner and Henry Sewell the arbitrator; for Great Britain George Jackson was the commissioner and John McTavish the arbitrator. George Hay was appointed, also, by the President of the United States to give such information and support that might be needed since individual claimants could not be present. The purpose of the commission was to prove the average value of the Negroes at the time of the ratification of the treaty and to determine the validity of individual claims. In the event no agreement could be reached recourse was had to the Emperor of Russia whose decision would be "final and conclusive." This action was insisted upon by America, whereas Great Britain persisted in refusing to submit such matters to the Emperor. Their progress, as a result, was not very marked. In considering the "definitive lists"⁷³ of claims these commissioners encountered many more doubtful and intricate problems. Claims not contained in this list were not to be taken cognizance of; nor was the British government required to make compensation for them. With

⁷¹ Moore's *International Arbitration*, p. 363.

⁷² *American State Papers, Foreign Relations*, Vol. V, p. 214.

⁷³ Maryland, 714; Va., 1721; S. C., 10; Ga., 833; La., 259; Miss., 22; Del., 2; Ala., 18. D. C., 3—page 801, Vol. V, *American State Papers*.

respect to compensation, Great Britain promised to produce all evidence which was in the possession of her naval and military officers concerning the number of slaves carried away. It was provided by the commission that no payment was to be made within twelve months. September 11, 1822, the board unanimously agreed on the average value of slaves as follows:

Each slave from Louisiana	\$580
Each slave from Georgia, South Carolina, Alabama	390
Each slave from Maryland, Virginia and other States	280

The next difficulty of the board occurred in regard to the allowance of interest on claims. Concerning this point, Cheves held that a reasonable compensation for the injury sustained should have been granted. "A just compensation," said Cheves, "is the reestablishment of the thing taken away with an equivalent for the use of it during the period of detention." In reply to this Jackson held that the convention of 1822 did not grant the commissioners the power to fix interests and, besides, that interests not being a part of the debt could not be allowed. Realizing the futility of his claims Cheves offered to submit the difference to arbitration, but Jackson declined.

Equally difficult questions arose in regard to the slaves taken away from Dauphin Island in Mobile Bay.⁷⁴ This island, controlled by the British during the war, was later surrendered to the United States. Concerning this Jackson held that it was not legally at the time of the ratifications of the treaty a part of the United States, that is, it was not a part of Louisiana but belonged to West Florida, which was not ceded to the United States until 1819.⁷⁵ In regard to this Cheves offered to refer these claims to arbitration, but in this view Jackson refused to acquiesce. The situation did not become any better even when Rufus King was sent as our minister to England to succeed Henry Clay who became John Quincy Adams's Secretary of State.

⁷⁴ Moore, *International Arbitration*, p. 377.

⁷⁵ *Ibid.*, p. 377.

Continued disagreement of the representatives of Great Britain and the United States resulted. Their failure to agree upon the provisions of the Convention of 1822—that matters under dispute be referred to arbitration made the work of this convention of little avail. Clay's offer of settlement was not favorably received in Great Britain. As to a basis of compromise, Clay said that the "total number of slaves on the definitive list was 3,601; that the entire value of all the property for which the indemnity was claimed including interest might be stated at \$2,693,120." Realizing that this large sum would never be secured, Clay suggested that \$1,151,800 might be used as the minimum in the negotiation. He used as a guide the fact that Parliament had appropriated 250,000 pounds to cover the awards of the commission. This sum, Mr. King observed also, was nearly the sum mentioned as a minimum by Clay in his instructions to him. Even with this information, the commissioners made little progress.

On the other hand, Mr. Vaughan, the British Envoy at Washington, said April 12, 1826, "that His Majesty's Government regretted to find themselves under the absolute impossibility of accepting the terms of compromise offered by the envoy from the United States in London." He did not admit, moreover, that the question of interest should be referred to arbitration, but maintained that the demand was unwarranted by the convention and unfounded by the Law Officers of the Crown.⁷⁶ In reply to his observation, Clay informed Vaughan of the fact that Great Britain's representatives had refused to refer many questions to arbitration and that if this refusal to cooperate in this regard should be upheld it would virtually be making him the final judge of every question of difference that arose in the joint commission.⁷⁷ This disagreement continued until 1825, when the commissioners met to collect and weigh evidence.

Soon thereafter, Albert Gallatin, who had been appointed

⁷⁶ *American State Papers, Foreign Relations*, Volume VI, page 344; 746.

⁷⁷ *Ibid.*, Vol. VI, p. 746.

Envoy of the United States to London, was authorized to treat with Canning on the oft-discussed question. During the first interview he discovered that, while there was a great reluctance to recede from the ground already taken by Jackson, there was also a disposition to settle that controversy.⁷⁸ Following the instructions given to King, Gallatin used the 250,000 pounds as the basis of settlement. This sum he was authorized to accept. He, however, did not make this offer known immediately but waited for the formal offer of \$1,200,000 from the British Government; and in conformity with his instruction of a later date, Gallatin offered as an ultimatum an acceptance of \$1,204,960, which the British Government reluctantly agreed to pay.⁷⁹

On November 13, 1826, a convention to carry out this agreement was concluded. The amount specified above was to cover all claims under the award of the Emperor of Russia. It provided, moreover, that the money was to be paid in Washington, in the current money of the United States, in two installments; the first twenty days after the British Minister in the United States should have been officially notified of the ratifications of the convention, and the second August 1, 1827. In this way the convention of 1822 was annulled, save as to the two articles relating to the average value of slaves which had been carried into effect, and as to the third article as related to the definitive list which had also been carried out.⁸⁰ This ended the work of the board. After ratification had been exchanged the board adjourned, March 26, 1827.

This left one more matter to be disposed of, that of executing the provisions of the commission of 1826. In compliance with this Congress passed an act, March 2, 1827, to carry out this agreement.⁸¹ A convention was thereby called to meet in Washington July 10th and proceed with the consideration of claims, "allowing such fur-

⁷⁸ *American State Papers, Foreign Relations*, Vol. VI, p. 348.

⁷⁹ *Ibid.*, Vol. VI, p. 352.

⁸⁰ *Ibid.*, Vol. VI, p. 372.

⁸¹ *Ibid.*, Vol. VI, p. 339

ther time for the production of evidence as they should think just." As soon as the claims were validated and the principal amounts ascertained seventy-five per cent of the principal was paid with the explanation that when all claims were settled, the other twenty-five per cent would be paid, if the fund permitted it. If it did not, then the remainder would be distributed in proportion to the sums awarded. In these negotiations, Langdon Cheves and Henry Sewell, who had only recently represented the United States in London, together with James Pleasants of Virginia, were appointed commissioners. They considered not only the claims on the definitive list but also those deposited in the Department of State and which had not been previously adjusted.

The conflicting interests of payments and the inconclusive evidence which were presented made the work of this convention more difficult. The records were very poor and contained little of the information desired. For this reason many claims were denied; especially was this true in Maryland and Virginia.⁸² Many of the claimants of other States nevertheless were compensated. Seventy-five per cent was granted them, the sum totalling \$600,000 being paid. This condition of affairs caused a clash among the 1,100 claimants, 700 of whose petitions on the definitive list were examined. Many other claimants were seeking evidence to secure compensation. They were not successful, however, for Cheves opposed the admission of hearsay testimony as well as the testimony of slaves. Well informed as to the progress of the commission, Congress passed an act May 15, 1828,⁸³ specifying August 31st as the last day on which the commission would meet. Of that entire amount awarded \$1,197,422.18 had been paid to the claimants. The remaining sum was "distributed and paid ratably," to all the claimants to whom compensation had been made. The work of the Convention of 1827 thus ended.

ARNETT G. LINDSAY

⁸² *American State Papers, Foreign Relations*, Vol. VI, page 855.

⁸³ *Four Statutes at Large*, page 269.